STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 1999-543

October 13, 1999

BELL ATLANTIC - MAINE
Request for Approval of
Interconnection Agreement with
DSLnet Communications, LLC d/b/a
DSL.net

ORDER APPROVING
INTERCONNECTION
AGREEMENT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, we approve an interconnection agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine (Bell Atlantic) (f/k/a NYNEX) and DSLnet Communications, LLC d/b/a DSL.net (DSL.net), pursuant to section 252 of the Telecommunications Act of 1996.

On August 10, 1999, Bell Atlantic filed a negotiated interconnection agreement with DSL.net, pursuant to 47 U.S.C. § 252, enacted by the Telecommunications Act of 1996. Interconnection agreements provide for interconnection between an incumbent local exchange carrier (ILEC) and another telecommunications carrier, including a competitive local exchange carrier (CLEC). An interconnection agreement may allow a telecommunications carrier to purchase unbundled network elements, or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an ILEC (or CLEC).

On September 23, 1999, Bell Atlantic filed a revised page of that agreement correcting a reference to its Maine schedule of terms and conditions.

The agreement incorporates terms and conditions of a separate interconnection agreement between NYNEX and New England Fiber Communications, L.L.C., approved by the Commission on August 26, 1997 in Docket No. 97-502 (the "Separate Agreement," attached as Appendix 1 to the agreement filed in this proceeding). Bell Atlantic and DSL.net agreed to replace in its entirety one schedule in the Separate Agreement: Schedule 4.0, titled "Network Interconnection Schedule." That Schedule is apparently intended to set activation dates on which traffic between Bell Atlantic and DSL.net will occur to implement the agreement. We note that the schedule is substantively blank. When the parties agree on a time frame to implement the filed agreement, they should file a completed Schedule 4.0 as an amendment to the agreement we approve today.

DSL.net will pay to Bell Atlantic the interconnection prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Bell Atlantic does not represent that the prices contained in the Agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in an August 20, 1999 Notice of Agreement and Opportunity to Comment. We do not make either of the findings set for in section 252(e)(2) for rejection, and we therefore approve the agreement.

We qualify our approval in two respects, however, and reserve findings on future potential issues. First, we reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Bell Atlantic's retail ratepayers. Bell Atlantic is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Bell Atlantic bears the risk of lost revenues resulting from rates that are too low. However, at the end of the initial 5-year period of the AFOR, and in 2005 if the present AFOR is renewed, we may have occasion to review Bell Atlantic's earnings. We do not resolve whether Bell Atlantic is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to DSL.net pursuant to 47 U.S.C. § 252(i) and, if they are not reasonable, whether we should impute revenues to Bell Atlantic.

Second, section 271(c) of the Act, 47 U.S.C. § 271(c), requires that the Bell Operating Companies (BOCs) meet certain requirements before they are allowed to provide interLATA service (the so-called "competitive checklist"). Under section 271(d)(3), the Federal Communications Commission (FCC) must determine whether the BOC has met the competitive checklist before granting the BOC authority to provide interLATA service within its region. Prior to making that determination, the FCC must consult with state commissions to verify the compliance of the BOC with the checklist. Our approval of this Agreement should not be construed as a finding that Bell Atlantic has met those requirements.

Separately, in Docket No. 99-110, DSL.net has petitioned for a finding of public convenience and necessity to provide local exchange telecommunications services in Maine. We approve that petition separately today.

The agreement filed by Bell Atlantic provides for interconnection between DSL.net and Bell Atlantic's network in Maine. If DSL.net seeks to interconnect with networks maintained by independent local exchange carriers in Maine, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. 251(f)(1)(A).

ORDERING PARAGRAPHS

Accordingly, we

1. Approve the Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine (f/k/a NYNEX) and DSLnet Communications, LLC d/b/a DSL.net, as revised by a corrected page filed on September 7, 1999, attached hereto, pursuant to 47 U.S.C. § 252(e); and

2. Order that the Administrative Director shall make a copy of the attached Agreement available for public inspection and copying pursuant to 47 C.F.R. § 252(h) within 10 days of the date of this Order.

Dated at Augusta, Maine this 13th day of October, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission to the Maine Supreme Judicial Court, sitting as the Law Court, is not available, as provided in 47 U.S.C. § 252(e)(6).

3. Review of this discussion is available to an aggrieved party by bringing an action in federal district court, as provided in 47 U.S.C. § 252(e)(6).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.